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No. 84-1485

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1985

ALFREDA WALKER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER QUESTIONS OF LAW

Respondent submits that the questions presented by the record in this case are more properly stated as follows:

1. Whether the State may constitutionally require an accused to prove, by a preponderance of the evidence, the affirmative defense of self-defense.

2. Whether a conviction for voluntary manslaughter, which is based upon direct evidence as to each and every element of the offense, is sufficient to satisfy the Due Process Clause where the accused has failed to prove the affirmative defense of self-defense by a preponderance of the evidence.

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To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

OBJECTIONS TO JURISDICTION

There is no substantial federal question involved which would require this Court to review the instant matter.

The question herein presented was raised in the Ohio Court of Appeals of Cuyahoga County, and the Supreme Court of Ohio.

The Ohio Court of Appeals, Eighth Judicial District, unanimously affirmed the petitioner's conviction. Likewise, the Supreme Court of Ohio overruled petitioner's Motion for Leave to Appeal and further denied petitioner's Motion for Rehearing.

The Ohio courts decided this case in accordance with the statutes of the State of Ohio, the Constitution of the United States and the applicable decisions of this Court. No substantial federal question is presented by the instant Petition for Certiorari.

HISTORY OF THE CASE

On March 12, 1984, the defendant was indicted in Case No. CR 188949 for one count of Murder. A trial commenced on June 11, 1984 without a jury, defendant having waived her right to a trial by jury in writing and in open court. The trial concluded on June 12, 1984, and the next day, the trial court returned a verdict of guilty as to the lesser included offense of Voluntary Manslaughter. After referral for a presentence investigation, defendant was sentenced accordingly.

The defendant appealed her judgment of conviction to the Ohio Court of Appeals, Eighth Judicial District. Judgment was affirmed on June 6, 1985.

On November 8, 1985, the Ohio Supreme Court overruled the defendant-petitioner's Motion for Leave to Appeal and further denied defendant-petitioner's Motion for Rehearing on December 13, 1985.

STATEMENT OF THE FACTS

On February 9, 1984, at approximately 12:31 a.m., a call came to C-Med, an emergency medical dispatch service, to respond to a report of a stabbing at 10111 Parmalee Avenue in the City of Cleveland. The Cleveland Police Department was also called to respond.

Upon their arrival, the police encountered the defendant, Alfreda Walker, who requested treatment for her common-law husband whom, defendant stated, she had stabbed because said husband had threatened her with a shotgun. Walter Walker was found by the police in a downstairs dining room, the police having observed him on the floor suffering from a stab wound.

After Walter Walker, the victim, had been removed from the residence, the police discovered a .22 caliber rifle underneath a bed in the upstairs bedroom. A more thorough search of the residence produced no other weapons other than a butcher knife which was found on the kitchen floor. Said knife was later identified as the weapon petitioner used to stab Walter Walker. A police detective who took baseboard measurements of the entire first floor of the residence found no other weapons at or near the perimeter of the first floor rooms.

The Cuyahoga County Coroner's officer testified that the victim, Walter Walker, died as a result of a stab wound to the left chest, the instrument having penetrated up to eight inches, piercing the heart and entering his lung.

REASONS FOR DENYING THE WRIT

At the outset, the petitioner has placed great emphasis upon the fact that:

> ". . . the trial court gave absolutely no indication as to the basis for his decision rejecting the self-defense evidence and finding the accused guilty of voluntary manslaughter." (Petition for Writ of Certiorari, page 6).

It is the trial court's failure to indicate its reason for rejection of the self-defense evidence which, petitioner argues, allowed the Ohio Court of Appeals to artificially impute its own rationalizations to the trial court.[1]

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1. Ohio Rules of Criminal Procedure, Rule 23(C) states in pertinent part that:

> (C) *Trial Without a Jury.*
>
> In a case tried without a jury, the court *shall make a general finding.* (Emphasis added.)

Ignoring this procedural guideline, the petitioner argued, on review to the State Appellate Court, that the trial judge's failure to make specific findings violated her due process rights. In addition, the petitioner, upon appeal, requested that the reviewing court examine the trial record to determine whether the evidence presented was sufficient to establish guilt beyond a reasonable doubt as to each and every element of the offense charged. At present, petitioner notes that the Ohio Court of Appeals "artificially imputed" its own rationalizations to the trial court when, in reality, the reviewing court was responding to that which petitioner requested: a thorough review of the trial court's record.

1. SELF-DEFENSE IS AN AFFIRMATIVE DEFENSE UNDER OHIO LAW AND TO IMPOSE UPON THE ACCUSED THE BURDEN OF PROVING SELF-DEFENSE BY A PREPONDERANCE OF THE EVIDENCE DOES NOT VIOLATE DUE PROCESS.

The United States Supreme Court has addressed the due process issue regarding the burden of proof required to establish an affirmative defense. In *Patterson v. New York*, 432 U.S. 197 (1977), this Court held that the mere recognition of an affirmative defense does not require the State to disprove its existence beyond a reasonable doubt. This is not to say that the State's burden is somehow lessened in situations where an accused has raised an affirmative defense. On the contrary, ". . . the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In Re: Winship*, 397 U.S. 358, 364 (1970).

In the case at bar, petitioner was charged with the crime of Voluntary Manslaughter.[2] The burden of proving

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2. The elements of the crime of voluntary manslaughter are set forth in Ohio Revised Code Section 2903.03(A) which states that:

> No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another.

Additionally, Ohio Revised Code Section 2901.22(B) sets forth the following with regard to the culpable mental state referred to in Ohio Revised Code Section 2903.03(A), explaining that:

> (B) A person acts knowingly, *regardless of his purpose*, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist. (Emphasis added.)

each and every element of the offense charged, beyond a reasonable doubt was, most certainly, upon the prosecution. *See*, Ohio Revised Code Section 2901.05(A). The aforesaid section also places the burden of proving an affirmative defense, by a preponderance of the evidence, upon the accused. Ohio has long determined that self-defense is an affirmative defense. *See, State v. Nolton*, 19 Ohio St. 2d 133 (1969). More recently, the Ohio Supreme Court has emphatically stated the following:

> We, therefore, hold that R.C. 2901.05 requires the prosecution to prove beyond a reasonable doubt every element of a homicide offense as defined by statute, and does not require the defendant to disprove any essential element of this offense. Thus, the State may constitutionally require a defendant to prove, by a preponderance of the evidence, the affirmative defense of self-defense. *State v. Martin*, 21 Ohio St. 3d 91, ... N.E.2d ..... (1986). *Id.* at 94, ...

The petitioner has paid substantial, and perhaps, unnecessary attention to the Ohio Court of Appeals opinion of this case. The issue herein, in its simplest of terms, and from the accused's point of view, should be stated in the following manner: Is the prosecution's burden of proving an accused's culpable mental state, beyond a reasonable doubt, somehow lessened where the accused is required to prove an affirmative defense by a preponderance of the evidence? This Court already answered such a question in *Patterson v. New York, supra*, where it was held that, consistent with due process, the prosecution must prove, beyond a reasonable doubt, only those elements set forth in the statutory definition of the offense charged. The recognition of an affirmative defense does not require the State to prove its nonexistence and it is within the

State's constitutional power to impose upon an accused the burden of proving an affirmative defense by a preponderance of the evidence. *Id.* at 207. *Accord, State v. Martin, supra.*

2. A GUILTY VERDICT IS NOT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHERE DIRECT EVIDENCE IS RELIED UPON TO PROVE EACH AND EVERY ELEMENT OF THE OFFENSE.

The petitioner contends that where circumstantial evidence, alone, is relied upon to prove a critical element essential to a finding of guilt, it must be consistent only with a theory of guilt and irreconcilable with any reasonable theory of innocence. *State v. Kulig,* 37 Ohio St. 2d 157 (1974).

Petitioner further claims that the fact-finder's disbelief of the petitioner's testimony at trial was somehow turned against her on the assumption that it was false.

The critical flaw in the aforesaid theory exists in that there was *direct evidence* before the trial court as to each and every element essential to the crime of voluntary manslaughter.

Behind the subterfuge, the petitioner is really asking this Honorable Court to do that which has already been done albeit with a different conclusion. The petitioner's conviction of voluntary manslaughter was proper and is well supported by the evidence. Once there has been a criminal conviction, appellate courts are bound to view the evidence in light of the evidence most favorable to the government, drawing all reasonable inferences consistent with the verdict. *United States v. Orrico,* 599 F.2d 113 (1979).

In the instant case, it is readily apparent that the trier of fact was convinced beyond a reasonable doubt, that the respondent met its burden of proof with regard to the crime of voluntary manslaughter. Similarly, it is also apparent that the trier of fact was convinced that the petitioner failed to sustain her burden with regard to the affirmative defense of self-defense.

CONCLUSION

In the case at bar, petitioner is requested that this Court dissect the opinion of the Ohio Court of Appeals for flaws in its opinion when that which is of concern should and must be the trial court's judgment of conviction and any due process violations which may have occurred therein.

The Respondent, State of Ohio, submits that the Petition herein fails to present any question of constitutional dimension justifying review by the Court. The Petition for Writ of Certiorari must, therefore, be denied.

Respectfully submitted,

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APPENDIX

OHIO REVISED CODE

2901.05 Presumption of innocence; proof of offense; of affirmative defense; as to each; reasonable doubt

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (D) of this section.

(C) As used in this section, an "affirmative defense" is either of the following:

(1) A defense expressly designated as affirmative;

(2) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which he can fairly be required to adduce supporting evidence.

(D) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs.